



POLICE DEPARTMENT

June 30, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Boris Salamea
Tax Registry No. 942491
40 Precinct
Disciplinary Case Nos. 2014-11507

The above-named member of the Department appeared before me on May 5, 2015, charged with the following:

1. Said Police Officer Boris Salamea, on or about September 18, 2012, at approximately 0314 hours, while assigned to the 40th Precinct and on duty, inside of [REDACTED], Bronx County, did intentionally use force without police necessity, in that Police Officer Salamea punched Person A, causing physical injury.

P.G. 203-11 - USE OF FORCE

The Civilian Complaint Review Board (CCRB) was represented by Jonathan Fogel, Esq. and Cindy Horowitz, Esq., Respondent was represented by John Tynan, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB entered a transcript and audio of a CCRB interview of Person A into evidence and called Daisy Santiago and Police Officer Edwin Rivera as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

FINDINGS AND ANALYSIS

On September 18, 2012, Respondent and his partner, Rivera, were on duty in uniform at the 40th precinct. At around 2:50 AM, a civilian came into the precinct complaining that he had been robbed by three men (Tr. p. 42, 45) and he led Respondent and Rivera to an apartment at [REDACTED] where he said the robbers were located. (Tr. p. 44). Respondent and Rivera knocked on the apartment door. Two males came to the door and were identified by the civilian as the robbers. Shortly thereafter a third male, Person A, came to the front of the apartment. Respondent and Rivera testified that they saw a man, later identified as the owner of the apartment, hitting Person A in the back of the head, so Respondent took Person A outside of the apartment into the hallway. (Tr. pp. 45, 95-96).

There are three somewhat differing versions of what happened once Person A was in the hallway. According to the Respondent, the civilian who led the Respondent to the apartment immediately identified Person A as one of the robbers. (Tr. p. 97). Respondent had Person A face the wall and he then started to cuff him. Person A initially was very compliant. Respondent cuffed Person A's left arm and then Person A refused to obey orders to put his right hand back to be cuffed. Respondent went to reach for Person A's arm, and Person A turned around and tried to run down the stairs. Respondent tried to keep him from running and he grabbed Person A "probably around the waist." (Tr. pp. 97-98). Person A had both hands free with the handcuff on one wrist at this time.

Respondent testified that based on his training a loose handcuff on an individual is considered a deadly weapon. (Tr. p. 98). Each time Respondent tried to get control, Person A would push him, so Respondent would try to grab Person A wherever he could. (Tr. p. 99). Respondent positioned his body as an obstacle between Person A and the stairs. Person A kept pushing and Respondent felt he was going to fall backwards down the stairs. Respondent was focused on preventing Person A from escaping, or using his cuffs as a weapon, and also on holding on to the handrail so that he wouldn't fall. (Tr. p. 100). Rivera came over to help Respondent restrain Person A. At this point Person A was close to the handrail, so Respondent grabbed the loose cuff and cuffed him to the handrail. After this point, there was no further force used to restrain Person A. (Tr. p. 102). Respondent does not recall specifically punching Person A in the face, but he testified it was possible that his fist made contact with Person A's face during the struggle before he was handcuffed to the rail. (Tr. pp. 120-121).

Person A, who is presently incarcerated for a robbery and did not appear to testify, presented a different version of what happened in the hallway in his CCRB interview. Person A stated that as he walked up to the door of the apartment, the officer pulled him out the apartment. According to Person A, he was compliant and stood facing a wall and presented both hands behind his back in order to be handcuffed. (CCRB X 1A, p. 24). Person A stated that the officer put one arm in handcuffs and then threw him to the handrail and handcuffed him to the handrail, leaving his one arm free. (CCRB X 1A, pp. 24-25).

Person A stated that the officer then took out his flashlight and started beating him. (CCRB X 1A p. 5). After giving a second narrative of what happened (CCRB X

1A, pp. 17-18), without mentioning being punched, Person A responded to the CCRB interviewer's further questions by stating that while he was handcuffed to the staircase, and after Respondent's partner had hit him with the flashlight, Respondent punched him one time in the face, which resulted in a black eye. (CCRB X 1A, p. 25). Person A next stated that he was subsequently placed in the police car and while his brother was watching, the officer he previously described as Respondent, opened the car door, punched him in the face and then shut the car door. (Tr. p. 31). In response to a later question, Person A told the investigator that the officer punched him one time in the face. (CCRB X 1A, p. 36).

The third witness who testified as to what happened in the hallway is Respondent's partner that night, Officer Rivera. Rivera described hearing his partner struggling with Person A and then going and grabbing Person A as he was trying to flee and eventually striking him with his asp. (Tr. pp. 46-47). In his testimony, Rivera said he couldn't recall if Respondent punched Person A in the face. (Tr. p. 58). In his CCRB interview, Rivera had stated that Person A was struck five to ten times in the face by Respondent's fists when he was resisting. (CCRB X 6, p. 22-23).

After the encounter, Person A requested to be taken from the precinct to the hospital. At the hospital Person A was assessed as having superficial abrasions in the areas of the left eye, left cheek, right shoulder and lower thoracic area of the spine and superficial scratches on the left wrist, right cheek, right upper eyelid and right lateral rib area. No fractures were found. He was treated and was released. (CCRB X 7). Two photos which Person A's mother testified she took the day after the incident were introduced into evidence. (CCRB X 3 and 4).

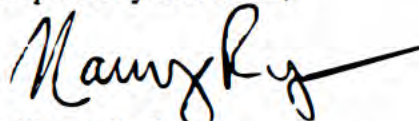
Respondent is charged with intentionally using force without police necessity and specifically with punching Person A in the face. The CCRB must prove by a preponderance of the evidence that Respondent took this action without legal authority. I find that they have not met this burden.

Person A did not appear to testify and therefore caution must be taken in giving weight to his version of events. He has not had his account tested by cross examination and this tribunal has not had the benefit of being able to evaluate his demeanor as he is testifying. An examination of Person A's statement to CCRB reveals inconsistencies and implausibilities which further limit the value of his statement for evidentiary purposes. He did not immediately recount that he was punched, which seemingly would have been the most important event in a narrative of his story. He also at different points describes one punch in the hallway and then one punch in the car, but after that reverts to saying he was punched one time. His statement that he was just waiting with both hands behind him to be handcuffed, but that the officers didn't take advantage of his compliance and chose to handcuff him to a rail does not ring true. Person A's CCRB statement cannot be given sufficient weight for CCRB to meet its burden.

CCRB also presented Rivera's hearsay statement from his CCRB interview which indicates that Person A's face was struck five to ten times by Respondent's fists. This tribunal has considered this statement. However, it is difficult to equate this description with either Person A's version or with the medical records. If this statement were taken to mean that Rivera saw Respondent punch Person A five to ten times in the face the medical records would have indicated greater damage to Person A's face. In addition, Rivera's description does not correspond with what Person A, the supposed recipient of

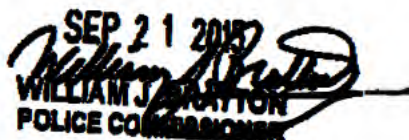
the punch, said was at most one punch to his face in the hallway. The more likely scenario of what took place in the hallway is that, as Respondent testified, during his attempts to keep Person A from fleeing or hitting him with his loose cuff, Respondent may possibly have made contact with Person A's face during the struggle. This would cause the injuries described as superficial in the medical records. This tribunal concludes that CCRB did not prove by a preponderance of the evidence that Respondent intentionally punched Person A in the face as is charged, and therefore Respondent is found Not Guilty.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner - Trials

APPROVED

SEP 21 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER